

FOURTH DIVISION  
SEPTEMBER 30, 2011

No. 1-10-2342

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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RENATA WEGRZYN,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 06 L 669
	)	
ALLSTATE INSURANCE COMPANY,	)	The Honorable
	)	Lee Preston,
Defendant-Appellee.	)	Judge Presiding.

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JUSTICE PUCINSKI delivered the judgment of the court.  
Justices Fitzgerald Smith and Sterba concurred in the judgment.

**ORDER**

*HELD:* Circuit court order awarding summary judgment to the insurer on a breach of contract claim brought by the insured reversed where: there was a genuine issue of material fact as to whether the insurer breached the terms of the insurance policy when it failed to issue payment to the insured within 30 days of receiving the insured's sworn statement of loss and whether the insured's ability to complete repairs to the insured property within the time limitation specified in the contract was impossible.

¶ 1 Plaintiff, Renata Wegrzyn, appeals an order of the circuit court granting defendant,

Allstate Insurance Company's motion for summary judgment and dismissing her breach of contract claim. On appeal, Wegryzn argues that there are genuine issues of material fact concerning the parties' compliance with the obligations set forth in her homeowner's insurance policy that preclude summary judgment. For the reasons set forth herein, we reverse the judgment of the circuit court.

## ¶ 2 BACKGROUND

¶ 3 On January 25, 2005, a fire damaged Wegryzn's single family residence located at 709 Glendale Drive in Prospect Heights, Illinois. At the time of the fire, Wegryzn possessed a "Deluxe" homeowner's insurance policy with Allstate. The policy extended insurance coverage to Wegryzn's dwelling and her personal property located therein from the period of May 8, 2004, to May 8, 2005. The policy provided \$280,000 for dwelling protection and \$196,000 for personal property protection.

¶ 4 The policy detailed the relevant coverage provisions as well as the rights and responsibilities of the parties. In pertinent part, section 3(g) of the "Conditions" provision in the policy set forth the insured's notification requirement in the event of a loss. It states: "[W]ithin 60 days of the loss, give **us** [Allstate] a signed, sworn proof of the loss." (Emphasis in original.)

¶ 5 In addition, section 4 of the "Conditions" provision in the policy detailed Allstate's settlement options in the event of a covered loss, stating:

### "Our Settlement Options

In the event of a covered loss, **we** [Allstate] have the option to:

(a) repair, rebuild or replace all or any part of the damaged,

destroyed or stolen property with property of the like kind and quality within a reasonable time; or

(b) pay for all or any part of the damaged, destroyed or stolen property as described in Condition 5 'How We Pay for a Loss.'

Within 30 days after **we** receive **your** signed, sworn proof of loss **we** will notify **you** of the option or options we intend to exercise."

(Emphasis in original.)

¶ 6 With respect to Allstate's payment options, section 5 of the "Conditions" provision limited the amount Allstate was required to pay to the actual cash value of the property if the insured elected not to repair or replace the insured property. Specifically, it provides:

"If you do not repair or replace the damaged, destroyed or stolen property, payment will be on an actual cash value basis. This means there may be a deduction for depreciation. Payment will not exceed the limit of liability  
\*\*\*."

¶ 7 In the event that the insured elected to repair or replace the damaged insured property, and the cost to do so exceeded the actual cash value of the property, the policy required Allstate to pay the insured the additional sum as long as the insured repaired the property within 180 days of receiving the actual cash value payment. Specifically, section 5(c) provides:

"**We** will make additional payment to reimburse **you** for cost in excess of actual cash value if **you** repair, rebuild or replace damaged, destroyed or stolen covered property within 180 days of the actual cash

value payment. This additional payment includes the reasonable and necessary expense for treatment or removal and disposal of contaminants, toxins or pollutants as required to complete repair or replacement of that part of a **building structure** damaged by a covered loss." (Emphasis in original.)

¶ 8 Following the fire, Wegrzyn submitted a claim to Allstate and authorized Allstate to investigate the fire.<sup>1</sup> Allstate conducted its investigation from January 2005 to October 2005. During that time, Allstate requested Wegrzyn to provide a sworn statement of loss as required by the policy and participate in an examination under oath. Wegrzyn complied with both requests and submitted her statement of loss on March 1, 2005. On October 14, 2005, Allstate concluded its investigation into the facts and circumstances of the fire and determined that Wegrzyn's claim was a "covered loss." On October 25, 2005, Allstate issued a check to Wegrzyn in the amount of \$184,700, for damage to Wegrzyn's personal property. Thereafter, on November 1, 2005, Allstate subsequently issued a check to Wegrzyn in the amount of \$278,447.70, which was the actual cash value payment for the damage to her dwelling.<sup>2</sup> In addition to these payments,

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<sup>1</sup> The Prospect Heights Fire Department also investigated the fire and concluded its investigation on March 4, 2005. The cause of the fire was "undetermined." The department closed its investigation because there were no additional leads it could pursue to further its investigation. Wegrzyn's house was deemed a "total loss."

<sup>2</sup> Given that the fire rendered Wegrzyn's dwelling a "total loss," we observe that Allstate would not have the option to "repair" the property; rather, its settlement options would have been

Allstate issued checks to Wegrzyn during the course of its investigation for her alternate living expenses. These payments totaled over \$95,000.<sup>3</sup>

¶ 9 On January 20, 2006, Wegrzyn filed a breach of contract claim against Allstate. She subsequently filed several amended complaints before filing her third-amended complaint on December 26, 2006, the filing at issue in the case at bar. In pertinent part, Wegrzyn alleged in her third amended complaint that Allstate violated the contractual provisions in the Deluxe policy by: failing to provide her with funds to cleanup the fire damage and debris on the property; failing to diligently and timely investigate the fire; failing to update her on the course of its investigation; failing to timely inform her of the option that Allstate chose to pay Wegrzyn's claim within 60 days after she submitted her proof of loss; and failing to provide her with additional funds in excess of the cash value of her residence to rebuild her home. Wegrzyn alleged that she fully complied with the provisions in the policy and suffered damages as a result of Allstate's breach and sought a monetary judgment against Allstate "in an amount in excess of \$50,000."

¶ 10 Allstate denied the material allegations in Wegrzyn's complaint and subsequently

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limited to replacing or rebuilding the dwelling or issuing Wegrzyn a cash settlement.

<sup>3</sup> Allstate made the following payments to cover Wegrzyn's living expenses: a \$6,475 payment on February 16, 2005; a \$31,500 payment made on February 17, 2005; a \$4,200 payment made on August 23, 2005; a \$4,200 payment on October 4, 2005; a \$5,700 payment made on October 19, 2005; a \$9,500 payment made on November 22, 2005; and a \$34,200 payment on February 8, 2006.

filed a motion for summary judgment. In its motion, Allstate argued that there were no genuine issues of material fact that Allstate fully complied with the terms of the contract. Specifically, Allstate observed that it issued a check to Wegrzyn on October 26, 2005, in the amount of \$184,700, in compensation for her personal property. Thereafter, on November 1, 2005, Allstate issued Wegrzyn a check in the amount of \$278,447.70, to compensate her for the actual cash value of her dwelling. Allstate argued that Wegrzyn was not entitled to additional compensation in excess of the actual cash value because she did not complete repairs to her property within 180 days of after the property was deemed a "covered loss" as required by the policy. Moreover, Allstate argued that it was not responsible for additional expenses Wegrzyn incurred, namely debris removal.

¶ 11 Wegrzyn filed a response to Allstate's motion, arguing that genuine issues of material fact existed, making summary judgment improper. Specifically, Wegrzyn disputed Allstate's contention that it abided by the terms of the insurance policy. Wegrzyn observed that she submitted her sworn statement of loss on March 1, 2005, and that Allstate did not pay her claim until November 1, 2005. Accordingly, Wegrzyn argued that Allstate breached the policy when it failed to inform her of the payment option it chose to exercise within 30 days after she submitted her sworn statement of loss. Moreover, she argued she was entitled to additional funds in excess of the actual cash value of her residence even though she failed to rebuild and repair the property within 180 days of receiving Allstate's check as required by the policy, because it was impossible for her to do so within that time constraint. She observed that Allstate delayed payment of her claim until winter and did not issue her a check to cover her property loss until

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November 1, 2005, even though she submitted her sworn statement of loss on March 1, 2005.

Moreover, Wegrzyn argued that she submitted building plans to the City of Prospect Heights for approval, but a fire destroyed Prospect Heights City Hall and she was instructed to re-apply for a building permit. Ultimately, her building plans were not approved until August 31, 2006.

Accordingly, because it was impossible for Wegrzyn to complete the reconstruction with 180 days after receiving Allstate's payment, she argued that she was entitled to additional compensation.

¶ 12 At the request of the trial court, the parties submitted supplemental summary judgment filings. Both parties submitted affidavits to support their filings. Allstate supported its filing with an affidavit completed by Butch Reinke, the Frontline Performance Leader, who handled Wegrzyn's insurance claim. In his affidavit, Reinke detailed the relevant time line and procedure pertaining to Allstate's investigation and payment of Wegrzyn's claim. Wegrzyn supported her response with her own affidavit, attesting to the various claims she made in her filing.

¶ 13 On July 16, 2010, the trial court entered a written order granting Allstate's motion for summary judgment, finding that Allstate did not breach the insurance contract. The court reasoned:

"When the 'Settlement Options' provision is read as a whole, it is clear Allstate only had to notify Plaintiff of its intentions within thirty days after receiving proof of loss if the fire was a covered loss. The fact that Plaintiff submitted the proof of loss before the fire was deemed a covered loss is

irrelevant to the 'Settlement Options' provision. It is undisputed that Allstate did not determine that Plaintiff's claim was a covered loss until October 14, 2005. Thus, on October 14, 2005, since Allstate already had Plaintiff's proof of loss, Allstate had thirty days to notify Plaintiff of the options it intended to exercise. On October 26, 2005, Allstate issued a check to Plaintiff in the amount of \$184,700; Allstate also issued a check on November 1, 2005 in the amount of 278,447.70. Therefore, Allstate notified Plaintiff within thirty days of October 14, 2005 and did not breach its obligations under the 'Settlement Options' provision."

The court further found that Wegrzyn was not entitled to additional compensation in excess of the actual cash value of her home because there was no genuine issue of material fact that she did not complete repairs within 180 days of receiving Allstate's payment. The court rejected Wegrzyn's contention that her ability to comply with the 180-day provision was impossible because of a fire at Prospect Heights City Hall, observing: "Plaintiff did not provide any evidence other than her own affidavit that such fire actually occurred or that the fire in fact delayed the repair of her home."

¶ 14 Wegrzyn's appeal followed.

#### ¶ 15 ANALYSIS

¶ 16 On appeal, Wegrzyn argues that the trial court erred in granting Allstate's motion for summary judgment because genuine issues of material fact exist regarding the parties' compliance with relevant provisions in her insurance policy. Specifically, she argues that a

genuine issue of material fact exists as to whether the 30-day response provision in the "Settlement Options" portion of policy is applicable only when there is a "covered loss" and whether Allstate complied with the policy when failed to issue payment within 30 days after Wegrzyn submitted her sworn statement of loss, but made the payment within 30 days after deeming the loss to be "covered" pursuant to the terms of the policy.

¶ 17 Summary judgment is appropriate when “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” 735 ILCS 5/2-1005(c)(West 2006). In reviewing a motion for summary judgment, a court must construe the pleadings, depositions, admissions, and affidavits strictly against the moving party to determine whether a genuine issue of material fact exists. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). Although summary judgment has been deemed a “drastic means of disposing of litigation” (*Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986)), it is nonetheless an appropriate mechanism to employ to expeditiously dispose of a lawsuit when the moving party’s right to a judgment in its favor is clear and free from doubt (*Morris v. Margulis*, 197 Ill. 2d 28, 35 (2001)). A trial court’s ruling on a motion for summary judgment is subject to *de novo* review. *Weather-Tite, Inc. v. University of St. Francis*, 233 Ill. 2d 385, 389 (2009).

¶ 18 The interpretation of an insurance contract and the rights and responsibilities of the parties thereto are questions of law, which are subject to *de novo* review. *First Chicago Insurance Co. v. Molda*, 408 Ill. App. 3d 839, 845 (2011). As such, they are appropriate subjects for summary judgment. *Crum & Forster Managers Corp. v. Resolution Trust Corp.*, 156 Ill. 2d

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384, 391 (1993). Insurance contracts are subject to the same rules of construction that apply to other types of contracts. *Continental Casualty Co. v. Donald T. Bertucci Ltd.*, 399 Ill. App. 3d 775, 780 (2010). A reviewing court's primary objective in construing the terms of an insurance contract is to give effect to the intent of the parties as expressed in their agreement. *Schultz v. Illinois Farmers Insurance Co.*, 237 Ill. 2d 391, 400 (2010). If the terms of an insurance policy are clear and unambiguous, they must be enforced as written unless doing so would violate public policy. *Schultz*, 237 Ill. 2d at 400.

¶ 19 If the terms of a contract are ambiguous, summary judgment is inappropriate. *William Blair & Co., LLC v. FI Liquidation Corp.*, 358 Ill. App. 3d 324, 334 (2005). An ambiguity exists when the contractual language is susceptible to more than one reasonable meaning. *Pekin Insurance Co. v. Wilson*, 237 Ill. 2d 446, 456 (2010); *Founders Insurance Co. v. Munoz*, 237 Ill. 2d 424, 433 (2010); *Allstate Insurance Co. v. Amato*, 372 Ill. App. 3d 139, 143 (2007). A provision in an insurance policy, however, is not considered ambiguous merely because the parties offer different possible interpretations as to the provision's meaning. *Founders Insurance*, 237 Ill. 2d at 433; *Amato*, 372 Ill. App. 3d at 143. Ultimately, an insurance policy must be examined as a whole to determine whether an ambiguity exists. *Founders Insurance*, 237 Ill. 2d at 433. If an ambiguity is found, it will be strictly construed against the insurer, the drafter of the policy. *Pekin*, 237 Ill. 2d at 456.

¶ 20 Initially, we observe that although the parties agree that Wegrzyn submitted a sworn statement of loss, the parties dispute the date on which it was submitted. In her affidavit, Wegrzyn alleges that she submitted a sworn statement of loss for her real property on March 1,

2005, and submitted a sworn statement of loss for her personal property on March 6, 2005. In the affidavit completed by Allstate employee, Butch Reinke, however, Reinke asserts that Wegryzn did not provide Allstate with a sworn statement of loss until May 5, 2005. Although Wegrzyn failed to attach her sworn statement of loss to her third amended complaint, we note that a copy of her sworn statement of loss was affixed to her initial complaint. Wegrzyn's sworn statement of loss is dated March 1, 2005.<sup>4</sup>

¶ 21 There is no dispute between the parties, however, that Allstate did not determine that Wegrzyn's claim constituted a "covered loss" until October 14, 2005. There is similarly no dispute that Allstate did not make any payments to Wegrzyn until October 26, 2005, when it issued a check in the amount of \$184,700, which covered the damage to Wegrzyn's personal property. Thereafter, on November 1, 2005, Allstate issued a check to Wegrzyn in the amount of 278,447.70, which was the actual cash value payment for the damage to her dwelling.

¶ 22 Ultimately then, the record reflects that Allstate exercised its settlement options within 30 days after determining that Wegrzyn's loss was a covered loss; but did not do so within 30 days after receiving her sworn statement of loss. The dispute between the parties is simply whether Allstate complied with the "Settlement Options" provision in the parties' insurance policy when it made payments to Wegrzyn within 30 days after deeming the fire damage a covered loss, but more than seven months after she submitted her sworn statement of loss.

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<sup>4</sup> Wegrzyn did not file her sworn statement of loss within 60 days of the fire as required by section 3(g) of the "Conditions" provision in the contract; however, Allstate has not challenged her compliance with that provision in the policy.

¶ 23 Again, the relevant Settlement Options provision in the parties' insurance contract provides as follows:

"Our Settlement Options

*In the event of a covered loss* **we** [Allstate] have the option to:

(a) repair, rebuild, or replace all or any part of the damaged, destroyed or stolen property with property of like kind and quality within a reasonable time;

(b) pay for all or any part of the damaged, destroyed or stolen property as described in condition 5 "How We Pay For a Loss."

Within 30 days after **we** [Allstate] received **your** signed, sworn proof of loss **we** [Allstate] will notify **you** of the option or options **we** [Allstate] intend to exercise." (Emphasis added.)

¶ 24 Wegrzyn argues that the last sentence of the "Settlement Options" provision is clear and unambiguous. It plainly requires Allstate to inform the policy holder of the settlement option it chooses to exercise within 30 days of receiving the insured's proof of loss. Although the introduction to the "Settlement Options" provision contains the prefatory phrase "[i]n the event of a covered loss," Wegrzyn emphasizes that nothing in the final sentence indicates that the 30-day notification requirement is triggered only after Allstate determines that the loss is covered. Allstate also agrees that the "Settlement Options" provision is clear and unambiguous; however, Allstate argues that when the provision is read as a whole, it is clear that Allstate only had to notify Wegrzyn of its intentions within 30 days of receiving the insured's sworn statement of loss,

only if the loss is a "covered loss." Allstate argues that Wegrzyn's erroneously reads the 30-day notification provision in isolation and fails to interpret the notice requirement in its proper context.

¶ 25 Although both parties argue that the provision is clear and unambiguous, we cannot agree. We emphasize that a reviewing court is not compelled to accept the position of the parties that their contract is unambiguous; rather, the presence or absence of ambiguity in a contract is subject to *de novo* review. See *James McHough Construction Co v. Zurich American Insurance Co.*, 401 Ill. App. 3d 127, 132 (2010); *William Blair & Co.*, 358 Ill. App. 3d at 335. Here, we find that the language in the settlement options provision is ambiguous, as it is subject to more than one reasonable interpretation. *Erie Insurance Exchange v. Triana*, 398 Ill. App. 3d 365, 368 (2010). Namely, the 30-day response requirement contained in the "Settlement Options" could be reasonably interpreted in ways suggested by each of the parties.

¶ 26 The 30-day response requirement is contained within the "Settlement Options" provision that specifically delineates Allstate's options in the event of a "covered loss." Based on this prefatory phrase, the trial court, in a detailed written order, found: "When the 'Settlement Options' provision is read as a whole, it is clear that Allstate only had to notify Plaintiff of its intentions within thirty days after receiving the proof of loss if the fire was a covered loss." We agree with the trial court that this is a reasonable interpretation of the notice requirement that is contained within the "Settlement Options" provision; however, we also find Wegrzyn's interpretation of the provision to be equally reasonable.

¶ 27 Indeed, although the 30-day response requirement follows language identifying

Allstate's indemnification options in the event of a "covered loss" it is not clear that Allstate must respond to an insured's sworn statement of loss within thirty days only when the loss is "covered." We note that the 30-day response provision does not contain language limiting Allstate's response requirement to losses that are covered by the policy. Rather, the 30-day provision is broad in scope and states: "Within 30 days after **we** [Allstate] received **your** signed, sworn proof of loss **we** [Allstate] will notify **you** of the option or options **we** [Allstate] intend to exercise." Because we find that the 30-day response provision is susceptible to more than one reasonable interpretation, it is ambiguous.

¶ 28 Further ambiguity is found in the parties' contract when the policy is read in its entirety. For example, the "Standard Fire Policy Provisions" rider affixed to the policy contains a different response requirement than that stated in the "Settlement Options" provision. Specifically, it states: "The amount of loss for which this Company may be liable shall be payable *sixty days* after proof of loss, as herein provided, is received by this Company and ascertainment of the loss is made either by agreement between the insured and this Company expressed in writing or by the filing with this Company of an award as herein provided." (Emphasis added.) We find that Allstate's response requirement, as a whole, is unclear.

¶ 29 In so finding, we find it noteworthy that in *Dunaway v. Allstate Insurance Co.*, 813 N. E. 2d 376 (2004), the Indiana Court of Appeals was called upon to construe the same provision at issue in the case at bar and also found it to be ambiguous. *Dunaway*, 813 N.E. 2d at 383. There, the court rejected Allstate's claim that their response requirement was only triggered in the event of a covered loss, explaining: "it is not clear from reading the thirty-day response

provision whether Allstate must respond to a proof of loss within thirty days *only* when the loss is covered. While the thirty-day response provision follows the section that sets forth Allstate's options in the event of a covered loss, the thirty-day response provision is not limited by its terms only to those losses that are covered by the policy." *Id.* at 383. Because it found the provision to be ambiguous, the *Dunaway* court adopted the interpretation that was most favorable to the insured and concluded that Allstate was required to respond to the insured's proof of loss within thirty days of its receipt even though Allstate ultimately concluded that the insured's loss was not a covered loss. *Id.* at 384. The court observed that "requiring the insurer to respond promptly to a proof of loss, regardless of whether the loss is covered, furthers the goal of the timely resolution of insurance claims." *Id.* at 383.

¶ 30 Ultimately, because we find that Allstate's response requirement contained in the "Settlement Options" provision in the parties' insurance contract is subject to more than one reasonable interpretation, we find that the trial court erred in awarding Allstate summary judgment on this issue.

¶ 31 Wegrzyn next contests the trial court's summary judgment order, arguing that there is a genuine issue of material fact as to whether it was impossible for her to rebuild her home within 180 days of receiving a check for the actual cash value of her dwelling and receive additional payment from Allstate.

¶ 32 Pursuant to the terms of the Deluxe policy, if Allstate elects to pay the insured the cost of the damaged or destroyed insured property, "payment will be on an actual cash value basis." However, section 5(c) of the "Conditions" section of the policy provides:

"**We** will make additional payment to reimburse **you** for cost in excess of actual cash value if **you** repair, rebuild or replace damaged, destroyed or stolen covered property within 180 days of the actual cash value payment.

This additional payment includes the reasonable and necessary expense for treatment or removal and disposal of contaminants, toxins or pollutants as required to complete repair or replacement of that part of a **building structure** damaged by a covered loss." (Emphasis in original.)

¶ 33 Here, there is no dispute that on November 1, 2005, Allstate issued a check to Wegrzyn in the amount of \$278,447.70, which represented the actual cash value of Wegrzyn's dwelling. There is similarly no dispute that pursuant to the terms of the policy, Wegrzyn had until May 1, 2006 (180 days from the date Allstate issued the check) to rebuild her dwelling and receive an additional payment from Allstate; however, Wegrzyn did not complete the rebuilding of her home by that date.

¶ 34 Although there is no genuine issue of material fact that Wegrzyn did not comply with the terms of the contract, she suggests that the affidavit she completed and filed in the trial court created a genuine issue of material fact that it was impossible for her to comply with the 180-day time limitation set forth in the policy. In her affidavit, Wegrzyn states:

"By January 11, 2006, I managed to secure architectural stamped building plans and contractor bids, and submitted a completed application for a permit to the City of Prospect Heights.

On April 15, 2006 a fire destroyed the Prospect Heights City Hall

including the building plans I submitted for approval. I initially submitted plans for approval on January 11, 2006. My plans and permit application were destroyed in the fire. I was told I needed to re-apply for a permit after the temporary City Hall was set up. I reapplied for a building permit as soon as the temporary City Hall was set up. My plans and permit were not approved until August 31, 2006.

I have been unable to complete 100% repair or replacement of my home within 180 days because: (A) Allstate unreasonably delayed in processing the claim; (B) I ran out of funds to complete repairs because a portion of the settlement was used to pay attorney's fees incurred to force Allstate's compliance with its contractual obligations; (C) The City of Prospect Heights was unable to process my permit application in a timely manner due to a fire at City Hall."

¶ 35 We find Wegrzyn's affidavit sufficient to create a genuine issue of material fact that her ability to rebuild her house was rendered impossible due to Allstate's delay in processing and paying her claim and the fire at Prospect Heights City Hall. In order to successfully invoke the doctrine of impossibility, an "extreme" exception to the general rule that a valid contract is to be enforced as written (*Warner v. Lucas*, 185 Ill. App. 3d 351, 354 (1989)), a party must prove that circumstances creating the impossibility were not and could not have been anticipated by the parties; that the party asserting the doctrine did not contribute to the circumstances; and that the party has tried all practical alternatives available to permit performance. *Illinois-American Water Co. v. City of Peoria*, 332 Ill. App. 3d 1098, 1106 (2002).

¶ 36 Here, the record shows that Wegrzyn provided a sworn statement of loss on March 1, 2005, but did not receive her settlement check until November 1, 2005, at a time when commencing construction would be difficult due to the onset of winter. Nonetheless, Wegrzyn quickly submitted building plans and a permit application on January 11, 2006. Her plans had not yet been approved by April 15, 2006, when the fire occurred at Prospect Heights City Hall. Wegrzyn's affidavit establishes that when she was instructed by the City of Prospect Heights to resubmit her building plans, she did so in a timely manner. The record thus shows that Wegrzyn did not contribute to the delay in rebuilding her residence. We find that Wegrzyn's affidavit creates a genuine issue of material fact that the combination of Allstate's delay in processing and paying her claim and the fire that destroyed Prospect Heights City Hall rendered her performance impossible. Accordingly, the trial court erred in granting Allstate's motion for summary judgment.

¶ 37 CONCLUSION

¶ 38 For the aforementioned reasons, we reverse the judgment of the circuit court.

¶ 39 Reversed.